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3-6-2009

# High Valley Concrete, L.L.C. v. Sargent Augmentation Record Dckt. 35312

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### Recommended Citation

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## In the Supreme Court of the State of Idaho

HIGH VALLEY CONCRETE, L.L.C., an Idaho  
limited liability company,

Plaintiff-Respondent,

v.

CARY SARGENT,

Defendant-Appellant,

and

GLENDAL CONSTRUCTION, INC., an Idaho  
corporation,

Defendant.

CARY SARGENT,

Plaintiff-Appellant,

v.

DOYLE BECK,

Defendant-Respondent,

and

MARK FULLER,

Defendant.

HIGH VALLEY CONCRETE, LLC, an Idaho  
limited liability company,

Plaintiff-Appellant,

v.

CARY SARGENT

Defendant-Respondent,

and

GLENDAL CONSTRUCTION, INC., an Idaho  
corporation,

Defendant.

ORDER GRANTING MOTION TO  
AUGMENT THE CLERK'S RECORD  
AND REPORTER'S TRANSCRIPT

Supreme Court Docket No. 35312-2008

Fremont County District Court No.  
07-118

Supreme Court Docket No. 35313-2008

Fremont County District Court No.  
2002-484

ORDER GRANTING MOTION TO AUGMENT THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT

CARY SARGENT,

Plaintiff-Respondent,

v.

DOYLE BECK,

Defendant-Appellant,

and

MARK FULLER,

Defendant.

LAW CLERK

A MOTION TO AUGMENT THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT  
with attachments and STATEMENT OF COUNSEL were filed by counsel for Appellant High Valley  
Concrete, LLC on January 12, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE CLERK'S  
RECORD AND REPORTER'S TRANSCRIPT be, and hereby is, GRANTED and the District Court  
Reporter shall prepare and lodge the transcript listed below with this Court within fourteen (14) days  
from the date of this Order for the reason all district court transcripts must be made appeal ready  
pursuant to I.A.R. 29. Furthermore, the District Court Clerk shall immediately, upon receipt of the  
transcript listed below, serve counsel and file the transcript with this Court. Any corrections shall be  
filed with this Court as provided by I.A.R. 30.1:

1. Transcript of the hearing held September 9, 2008, on the Motion for Reconsideration.

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed  
below, file stamped copies of which accompanied this Motion:

1. Order regarding case no. CV-02-484 going to inactive status due to pending bankruptcy, file  
stamped December 19, 2003;
2. Complaint which is Sargent's original complaint in case no. CV-06-1046, file stamped  
February 22, 2006;
3. Order to Consolidate the two cases, file stamped February 7, 2007;
4. Writ of Execution and accompanying Instructions to the Sheriff, file stamped April 1, 2008;
5. Motion for Reconsideration, file stamped July 25, 2008; and
6. Order file stamped October 29, 2008.

ORDER GRANTING MOTION TO AUGMENT THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT

DATED this 6<sup>th</sup> day of March 2009.

For the Supreme Court

cc Counsel of Record  
District Court Clerk  
Court Reporter David Marlow

Stephen W. Kehyoh, Clerk

AUGMENTATION RECORD

# In the Supreme Court of the State of Idaho

HIGH VALLEY CONCRETE, L.L.C., an Idaho )  
limited liability company, )

Plaintiff-Respondent, )  
v. )

CARY SARGENT, )

Defendant-Appellant, )  
and )

GLENDAL CONSTRUCTION, INC., an Idaho )  
corporation, )

Defendant. )

----- )  
CARY SARGENT, )

Plaintiff-Appellant, )  
v. )

DOYLE BECK, )

Defendant-Respondent, )  
and )

MARK FULLER, )

Defendant. )

HIGH VALLEY CONCRETE, LLC, an Idaho )  
limited liability company, )

Plaintiff-Appellant, )  
v. )

CARY SARGENT )

Defendant-Respondent, )  
and )

GLENDAL CONSTRUCTION, INC., an Idaho )  
corporation, )

Defendant. )

ORDER GRANTING MOTION TO  
AUGMENT THE CLERK'S RECORD  
AND REPORTER'S TRANSCRIPT

Supreme Court Docket No. 35312-2008

Fremont County District Court No.  
07-118

Supreme Court Docket No. 35313-2008

Fremont County District Court No.  
2002-484

----- )  
CARY SARGENT, )

Plaintiff-Respondent, )

v. )

DOYLE BECK, )

Defendant-Appellant, )

and )

MARK FULLER, )

Defendant. )

A MOTION TO AUGMENT THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT *with attachments* and STATEMENT OF COUNSEL were filed by counsel for Appellant High Valley Concrete, LLC on January 12, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE CLERK'S RECORD AND REPORTER'S TRANSCRIPT be, and hereby is, GRANTED and the District Court Reporter shall prepare and lodge the transcript listed below with this Court within fourteen (14) days from the date of this Order for the reason all district court transcripts must be made appeal ready pursuant to I.A.R. 29. Furthermore, the District Court Clerk shall immediately, upon receipt of the transcript listed below, serve counsel and file the transcript with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1:

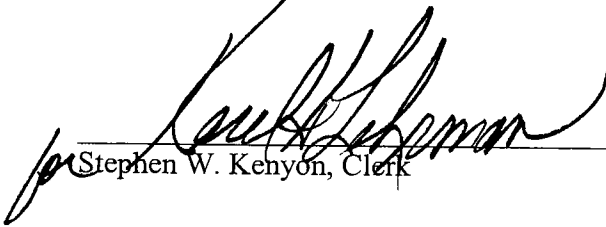
1. Transcript of the hearing held September 9, 2008, on the Motion for Reconsideration.

IT FURTHER IS ORDERED that the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Order regarding case no. CV-02-484 going to inactive status due to pending bankruptcy, file stamped December 19, 2003,;
2. Complaint which is Sargent's original complaint in case no. CV-06-1046, file stamped February 22, 2006;
3. Order to Consolidate the two cases, file stamped February 7, 2007;
4. Writ of Execution and accompanying Instructions to the Sheriff, file stamped April 1, 2008;
5. Motion for Reconsideration, file stamped July 25, 2008; and
6. Order file stamped October 29, 2008.

DATED this 6<sup>th</sup> day of March 2009.

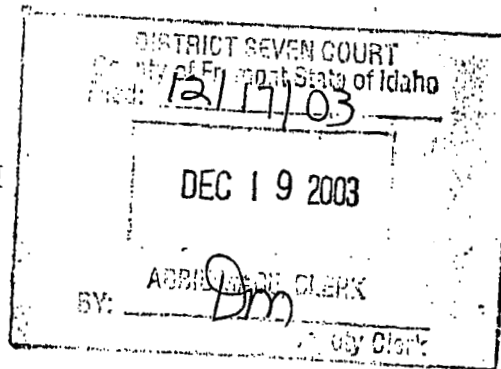
For the Supreme Court

  
for Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
Court Reporter David Marlow

# *Exhibit A*

Bryan D. Smith  
 Idaho State Bar Number: 4411  
**McGRATH, MEACHAM, SMITH  
 & SEAMONS, PLLC**  
 414 Shoup Avenue  
 P.O. Box 50731  
 Idaho Falls, Idaho 83405  
 Telephone: (208) 524-0731  
 Facsimile: (208) 529-4166



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HIGH VALLEY CONCRETE, L.L.C.  
 An Idaho Limited Liability Company,

Plaintiff,

vs.

CARY SARGENT,

Defendant.

Case Number CV-02-484

**ORDER**

Plaintiff, High Valley, L.L.C.'s Motion to Continue Trial Setting was heard telephonically before the Honorable Brent J. Moss, District Judge on November 25, 2003 and the Court having considered oral argument from counsel and otherwise being fully advised on the premises;

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

1. That plaintiff's Motion to Continue Trial is GRANTED;
2. This case will be put on an inactive status pending the results from the bankruptcy.

DATED this 17 day of <sup>December</sup>~~November~~, 2003.

Brent J. Moss

Brent J. Moss  
District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of <sup>December</sup>~~November~~, 2003, I caused a true and correct copy of the foregoing **ORDER** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

Bryan D. Smith, Esq.  
McGRATH, MEACHAM, SMITH  
& SEAMONS, PLLC  
P.O. Box 50731  
Idaho Falls, Idaho 83405

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

William D. Faler, Esq.  
HOLDEN, KIDWELL, HAHN  
& CRAPO, PLLC  
P.O. Box 50130  
Idaho Falls, Idaho 83405

Delores Mace  
Clerk of the Court



*Exhibit B*

**CASE ASSIGNED TO  
JUDGE GREGORY S. ANDERSON**

William D. Faler, Esq.  
Idaho State Bar No. 1464  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.  
1800 Riverwalk Drive, Suite 200  
Idaho Falls, Idaho 83402  
Mailing Address:  
P. O. Box 2000  
Idaho Falls, Idaho 83405-0130  
Telephone: (208) 523-0920  
Facsimile: (208) 523-9518

2008 FEB 22 PM 4:21

DISTRICT COURT  
BONNEVILLE DIVISION  
BONNEVILLE COUNTY  
12240

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CARY SARGENT,

Plaintiff,

vs.

DOYLE BECK and MARK FULLER,

Defendants.

**From Court CU07-118**

Case No. CV-06-1046

**COMPLAINT**

Filing Category A-1

Filing Fee: \$22.00

COMES NOW the above named Plaintiff and for cause of action against the above named Defendants alleges as follows:

1. At all times herein mentioned Plaintiff, Cary Sargent, (hereafter "Sargent") was and now is a resident of the State of Idaho.
2. Defendant, Doyle Beck, (hereafter "Beck") is a resident of Bonneville County, Idaho.
3. Defendant, Mark Fuller, (hereafter "Fuller") is a resident of Bonneville County, Idaho.

**ORIGINAL**

4. In 1997, Sargent was approached by Beck regarding putting together a concrete business with a batch plant and some concrete trucks Beck owned.

5. Beck and Sargent decided in March 1997 to form a new concrete company with the ownership to be divided 51% for Beck and 49% for Sargent to be known as High Valley Concrete, LLC.

6. On March 24, 1997, Beck and Sargent had Fuller organize High Valley Concrete, LLC.

7. A few days later on April 3, 1997, Sargent was asked to meet with Beck and Fuller, the attorney who was representing both Beck and Sargent.

8. At the meeting with Beck and Fuller, Beck and Fuller recommended that instead of issuing 49% of the Limited Liability Company units to Sargent, that all of the Limited Liability Company units be placed in Beck's name because Beck could better utilize any tax deductions in the early years of the business Beck and Fuller stated that if Sargent agreed to have his units issued or transferred to Beck, the units would be transferred back to Sargent after a few years.

9. Sargent agreed and Fuller immediately pulled documents out of the desk for Sargent to sign so that all units of ownership were placed in Beck's name.

10. By acting as described in paragraphs 2 through 9 of this Complaint, Beck and Fuller assumed a fiduciary duty toward Sargent for Sargent's contributions to and interest in High Valley Concrete, LLC.

11. As a result of the representations and promises of Beck and Fuller:

- a. Sargent contributed to High Valley Concrete, LLC \$26,065.00 from the buyout of his interest in another business ownership.

- b. Sargent made other monetary contributions into High Valley Concrete, LLC., and
- c. Sargent made other equipment and labor contributions into High Valley Concrete, LLC.

12. All of the contributions were made by Sargent on the basis of Beck and Fuller holding his interest for him.

13. Thereafter, Sargent managed High Valley Concrete, LLC.

14. On February 22, 2002, Beck removed Sargent as the manager of High Valley Concrete, LLC and since that date Beck has refused to allow Sargent access to the business, and has refused to re-pay Sargent his contribution to the business.

15. Beck and Fuller breached the fiduciary duty to Sargent by not protecting Sargent's interest in High Valley Concrete, LLC, and not accounting to Sargent for his monetary and property contributions to High Valley Concrete, LLC.

16. As a result of the breach of the fiduciary duty by Beck and Mark Fuller, Sargent has been damaged by the loss of his contributions to High Valley Concrete, LLC in an amount to be proven at trial.

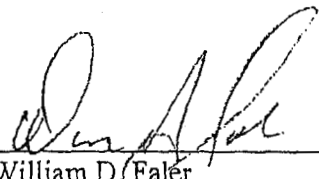
#### ATTORNEY FEES

That as a further and proximate result of the negligence of Defendants, and each of them, it has been necessary for plaintiffs to retain an attorney, William D. Faler of Holden, Kidwell, Hahn & Crapo, P.L.L.C., to initiate and prosecute this action; that pursuant to the provisions of Idaho Code Section 12-120(3) and 12-121 and the Idaho Rules of Civil Procedure, Plaintiff is entitled to recover their court costs and the sum of \$2,500.00 for attorney fees in the event of a default and for a greater sum to be determined by the Court in the event the matter is litigated.

WHEREFORE, Plaintiff prays the judgment, order and decree of this court against Defendants (jointly and severally) as follows:

1. For judgment against Defendants in an amount to be proven at trial.
2. For attorney fees pursuant to Idaho Code Section 12-120(3) and/or 12-121 in the amount of \$2,500.00 in the event of default or such other sum as set by the Court in the event this matter is litigated.
3. For costs of suit incurred herein; and
4. For such other and further relief as the court deems just and equitable.

DATED this 22<sup>nd</sup> day of February, 2006.

  
\_\_\_\_\_  
William D. Faler  
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

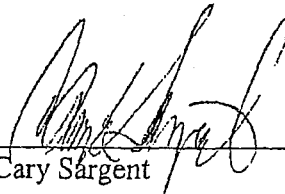
Verification

STATE OF IDAHO           )  
                                  ) ss.  
County of Bonneville    )

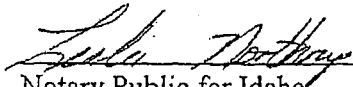
Cary Sargent being first duly sworn on oath deposes and states:

That I am the Plaintiff in this matter, that I have read the foregoing Verified Complaint, know the contents thereof and believe them to be true and correct to the best of my belief.

DATED this 22<sup>nd</sup> day of February, 2006

  
Cary Sargent

SUBSCRIBED AND SWORN TO before me this 22<sup>nd</sup> day of February, 2006.

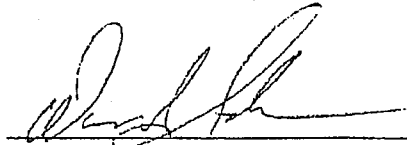
  
Notary Public for Idaho  
Residing at: Moore, ID  
My Commission Expires: 9/29/2009

(Seal)

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of not less than twelve (12) persons as to all issues triable to a jury in this matter.

DATED THIS 22<sup>nd</sup> day of February, 2006.



William D. Faler  
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

G:\WPDATA\IWDF\10827Sargent\Counter Suit\Complaint.wpd

# *Exhibit C*



RECEIVED FEB - 9 2007

Bryan D. Smith, Esq. – ISB No. 4411  
B. J. Driscoll, Esq. – ISB No. 7010  
**McGRATH, MEACHAM & SMITH, PLLC**  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
(208) 524-0731

7TH JUDICIAL DISTRICT COURT  
BONNEVILLE COUNTY, IDAHO

7 FEB -7 A9:57

Attorneys for Defendant Doyle Beck

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CARY SARGENT,

Plaintiff,

vs.

DOYLE BECK and MARK FULLER,

Defendants.

Case No. CV-06-1046

**ORDER TO CONSOLIDATE**

The Stipulation to Consolidate having been presented to the Court and the Court  
being fully advised in the premises;

IT IS HEREBY ORDERED AND THIS DOES ORDER that the above-entitled  
action be consolidated with Case No. CV-02-484 now pending in the District Court of the  
Seventh Judicial District of the State of Idaho, in and for the County of Fremont.

MADE AND ENTERED this 7 day of February, 2007.

*Richard T. St. Clair*

Richard T. St. Clair  
District Judge

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of February, 2007, I caused a true and correct copy of the foregoing **ORDER TO CONSOLIDATE** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

William D. Faler, Esq.  
HOLDEN, KIDWELL, HAHN  
& CRAPO, PLLC  
P.O. Box 50130  
Idaho Falls, Idaho 83405  
Attorneys for Plaintiff

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

Bryan D. Smith, Esq.  
B. J. Driscoll, Esq.  
McGRATH, MEACHAM & SMITH  
P. O. Box 50731  
Idaho Falls, Idaho 83405-0731

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

Craig Simpson, Esq.  
SIMPSON & GAUCHAY  
P. O. Box 50484  
Idaho Falls, Idaho 83405

Clerk of the District Court

By:   
Deputy Clerk

# *Exhibit D*

Bryan D. Smith, Esq. - ISB No. 4411  
 B. J. Driscoll, Esq. - ISB No. 7010  
**McGRATH, SMITH & ASSOCIATES, PLLC**  
 P. O. Box 50731  
 414 Shoup Avenue  
 Idaho Falls, Idaho 83405  
 Telephone: (208) 524-0731  
 Telefax: (208) 529-4166

CIVIL # \_\_\_\_\_  
 COMPLAINT # \_\_\_\_\_  
 2008 MAR 32 PM 3:53  
 APR 01  
 BONNEVILLE COUNTY  
 SHERIFF'S OFFICE  
 IDAHO FALLS, IDAHO  
 RECEIVED

Attorneys for Plaintiff, High Valley Concrete, L.L.C.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

HIGH VALLEY CONCRETE, L.L.C., an  
 Idaho limited liability company,

Plaintiff,

vs.

CARY SARGENT, and GLENDALE  
 CONSTRUCTION, INC., an Idaho  
 corporation,

Defendants.

Case No. CV-02-0484

**WRIT OF EXECUTION**

THE PEOPLE OF THE STATE OF IDAHO

To the Sheriff of the County of Bonneville,

GREETINGS:

Judgment	\$123,326.30
Costs	\$0.00
Interest	\$0.00
Payments	\$-0.00

Total	\$123,326.30
-------	--------------

WHEREAS, the plaintiff, High Valley Concrete, LLC, recovered judgment in the said District Court in the said County of Fremont, against Cary Sargent on March 31, 2008, for the sum of \$123,326.30, with interest at the legal rate for judgments as

S

prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear to us on record.

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court in said County of Fremont, and the said judgment was docketed in said Clerk's office in the said County, on the day and year first above written.

And the sum of \$123,326.30 with interest in the amount of \$0.00, plus costs of \$00.00, less payments of \$0.00 for a total of \$123,326.30 is now—as of March 31, 2008—actually due on said judgment.

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon.

WITNESS HON. Richard J. St. Clair by Brent Moso  
Judge of the said District Court, at the Courthouse in the County of Fremont, this  
18 day of March, 2008. Brent J Moso  
April

ATTEST my hand and seal of said Court the day and year last above written.

Abbie Mace  
Clerk

Becky Harregfeld  
Deputy Clerk

COPY

Bryan D. Smith, Esq. – ISB No. 4411  
B. J. Driscoll, Esq. – ISB No. 7010  
**McGRATH, SMITH & ASSOCIATES, PLLC**  
P. O. Box 50731  
414 Shoup Avenue  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Telefax: (208) 529-4166

Attorneys for Plaintiff, High Valley Concrete, L.L.C.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

HIGH VALLEY CONCRETE, L.L.C., an  
Idaho limited liability company,

Plaintiff,

vs.

CARY SARGENT, and GLENDALE  
CONSTRUCTION, INC., an Idaho  
corporation,

Defendants.

Case No. CV-02-0484

**INSTRUCTIONS TO SHERIFF**

**TO: THE SHERIFF OF BONNEVILLE COUNTY, IDAHO:**

Pursuant to Writ of Execution now in your possession, you are instructed that

Cary Sargent, now has in his possession the following-described property:

- Amended Judgment in Fremont County Case No. CV-07-0118 filed in chambers in Madison County on March 31, 2008, in the face amount of \$82,220.13.

That said Cary Sargent, can be found at 359 N. 2400 E., St. Anthony, Idaho, 83445. You are instructed forthwith to exercise said Writ of Execution against the above property by personally serving the Writ of Execution and Notice of Attachment on Cary Sargent's attorney of record, William D. Faler, Esq., at 1000 Riverwalk Drive, Suite 200,

Idaho Falls, Idaho, 83405 without delay. You are further instructed to mail copies of the Writ of Execution and the Notice of Attachment to Cary Sargent at 359 N. 2400 E., St. Anthony, Idaho, 83445, and to his attorney of record, William D. Faler, Esq., at P.O. Box 50130, Idaho Falls, Idaho, 83405.

DATED this \_\_\_\_ day of March, 2008.

McGRATH, SMITH & ASSOCIATES PLLC

By \_\_\_\_\_  
Bryan D. Smith  
Attorneys for Plaintiff

*Exhibit E*



Bryan D. Smith, Esq. – ISB No. 4411  
B. J. Driscoll, Esq. – ISB No. 7010  
**McGRATH, SMITH & ASSOCIATES, PLLC**  
P. O. Box 50731  
414 Shoup Avenue  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Telefax: (208) 529-4166

DISTRICT SEVEN COURT	
County of Fremont State of Idaho	
Filed:	
JUL 25 2008	
ABBIE MACE, CLERK	
By: <i>[Signature]</i>	Deputy Clerk

Attorneys for Plaintiff, High Valley Concrete, L.L.C.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

HIGH VALLEY CONCRETE, L.L.C., an  
Idaho limited liability company,

Plaintiff,

vs.

CARY SARGENT, and GLENDALE  
CONSTRUCTION, INC., an Idaho  
corporation,

Defendants.

Case No. CV-02-0484

**MOTION FOR RECONSIDERATION**

COMES NOW the plaintiff, High Valley Concrete, L.L.C. ("High Valley"), by and through its attorney of record, Bryan D. Smith, Esq., of the firm McGrath, Smith & Associates, PLLC, and moves the court pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B) for reconsideration of the court's Memorandum Decision entered July 14, 2008, denying High Valley's motion to contest claim of exemption and third party claim.

This motion is made on the grounds and for the reasons set forth more fully in High Valley's forthcoming Brief in Support of Motion for Reconsideration to be filed within fourteen (14) pursuant to Idaho Rule of Civil Procedure 7(b)(3)(C).

This motion is based on this Motion, the forthcoming Brief in Support of Motion for Reconsideration and Notice of Hearing, the evidence at trial, and on the court's records and files herein.

High Valley requests oral argument.

DATED this 25 day of July, 2008.

McGRATH, SMITH & ASSOCIATES, PLLC

By: 

Bryan D. Smith

Attorneys for plaintiff, High Valley  
Concrete, LLC, and defendant Doyle Beck

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25 day of July, 2008, I caused a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

William D. Faler, Esq.  
HOLDEN, KIDWELL, HAHN  
& CRAPO, PLLC  
P.O. Box 50130  
Idaho Falls, Idaho 83405

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery
- ☐ Courthouse Mail Box

John M. Ohman, Esq.  
COX, OHMAN &  
BRANDSTETTER, CHTD  
P.O. Box 51600  
Idaho Falls, Idaho 83405

  
Bryan D. Smith

# *Exhibit F*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF FREMONT

HIGH VALLEY CONCRETE, LLC, )  
an Idaho Limited Company, )

Plaintiff, )

vs )

Case No. CV-02-484  
CV-07-118

CARY SARGENT & GLENDALE, )  
CONSTRUCTION, INC., an )  
Idaho Corporation, )  
Defendants. )

September 9, 2008

St. Anthony, Fremont County, Idaho

BEFORE THE HONORABLE BRENT J. MOSS

COPY

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Marked    Admitted

(None)

1 September 9, 2008

2 St. Anthony, Fremont County, Idaho

3  
4 THE COURT: Now, Mr. Faler and Mr. Smith. This  
5 is a Motion to Reconsider. Is there anything to  
6 reconsider in this case?

7 MR. SMITH: Absolutely. And I don't normally  
8 file these, but --

9 THE COURT: I know. I say that a little tongue  
10 in cheek.

11 MR. SMITH: Okay. I don't know if you've had a  
12 chance to read our brief or not.

13 THE COURT: I have. In fact, we've been  
14 working on it since it was filed, so with that in  
15 mind, Mr. Smith, go ahead. I know it's your motion.  
16 Then, Mr. Faler, we'll let you respond.

17 MR. SMITH: The reason that we filed a Motion  
18 for Reconsideration, I normally don't file these  
19 because I understand how they work, I've been at this  
20 a long time. But in this particular case the Court  
21 devoted very little attention to the 1.8A conflict.  
22 Now, I've got to tell the Court that to this point I  
23 don't think there's any dispute on the law that we've  
24 cited, but if there's a violation of that 1.8A, that  
25 that makes the transaction void.

1 THE COURT: Let me ask you a question there.  
2 Is that anything that you would have a standing to  
3 raise?

4 MR. SMITH: Now, this is interesting because  
5 that issue's not been raised yet, not squarely.

6 THE COURT: Well, that's the one that comes to  
7 mind as I read that.

8 MR. SMITH: I understand that. We've addressed  
9 that because I figured the Court at some point was  
10 going to address that. They really haven't, they kind  
11 of tossed it around, but that's not an issue that's  
12 been raised, but I will address it.

13 We believe we do have standing and the reason  
14 is this: Is that let's suppose for example that  
15 Mr. Sargent would have assigned that judgment to a  
16 third party. By virtue of the assignment the person  
17 that gets the judgment takes subject to all the claims  
18 that Mr. Sargent would have had against the security  
19 agreement. There's no question Mr. Sargent had  
20 standing to raise these challenges to the security  
21 agreement. He makes an assignment, certainly those  
22 get transferred, all the defenses that he had.

23 In this particular case what we did is we  
24 attached the judgment. So we have standing by virtue  
25 of our attachment because we take subject to his



1 claims. Now, if it was just some interloper, some  
2 third party who had no interest, that would be  
3 different, but we've actually executed and attached  
4 the judgment. We take subject. That's our argument  
5 is we take subject.

6 THE COURT: I understand that. I've been  
7 trying to wrap my mind around this for awhile. It  
8 seems to me like if Mr. Sargent can do whatever he  
9 wishes with his property to try to secure payment to  
10 his attorney and I'm still not sure that you can  
11 attach and grab ahold of that and say, no, you can't  
12 do that because we own the judgment. That's my  
13 problem. I'm not sure you can do that.

14 MR. SMITH: Now, I'm not sure I understand what  
15 the Court's issue is.

16 THE COURT: Well, Mr. Sargent can do what he  
17 wishes with his property. He can assign it to  
18 anybody. There was no judgment in place when this  
19 assignment was made.

20 MR. SMITH: Okay.

21 THE COURT: So he's made the assignment, now  
22 here comes later what you called, you're not  
23 interlopers, but you've got a judgment now and you say  
24 all right, I'm going to set aside what you did. I'm  
25 not sure you can step in his place and do that. He

1 can do what he wants with his property. He's the one  
2 that normally raised this issue. Had he raised this  
3 issue, it's a no-brainer.

4 MR. SMITH: And I would say this, Your Honor,  
5 that would give merit to at least file a Motion for  
6 Reconsideration because that issue has never been  
7 addressed, it's never been briefed. We haven't  
8 actually looked at that in detail, but my position is  
9 this: The focus shouldn't be on Mr. Sargent. The  
10 focus should be on Mr. Faler and his compliance or  
11 noncompliance with the rule because the cases that we  
12 cited to the Court even say even if it's a good deal  
13 for the client, it's not a defense for the attorney to  
14 say that this was a good deal even if the client says,  
15 yes, it was a good deal for me, it is still subject to  
16 being set aside because it's a violation of the rule.

17 THE COURT: I agree. But even in the cases  
18 you've cited it's always the client that's making that  
19 claim, it's not a third party coming in. And I'm  
20 having trouble breaching that step between client and  
21 third party to claim some advantage under some rule  
22 that's meant to protect the client.

23 MR. SMITH: All I asked for it to do is this:  
24 It sounds like because here's what happened, when we  
25 filed our motion initially the Court ruled that

1 because we hadn't proven that this was a -- at  
2 security interest it was adverse to Mr. Sargent,  
3 because we hadn't proven it was adverse, we had to  
4 prove noncompliance with the rule. In other words,  
5 the rule didn't apply because we didn't establish that  
6 it was an adverse security interest.

7 THE COURT: And I agree with that, but your  
8 Motion to Reconsider took us to the next step and  
9 that's what I've been wrestling with lately.

10 MR. SMITH: No, my Motion for Reconsideration  
11 says the Court did two things that I think we're in  
12 error. The first one is that the rule says if you  
13 have a possessory or an ownership or a security  
14 interest or any other adverse interest. What I think  
15 the rule means is that those three interests,  
16 possessory, security or an ownership interest with  
17 your client is per se as a matter of law adverse.  
18 There may be other interests that are adverse and if  
19 they are, if you engage in another transaction that is  
20 adverse, then you have to comply with the rules. I  
21 needed to raise that argument with the Court, okay,  
22 because now we're talking about how to interpret a  
23 code section or a rule.

24 The reason we don't have to get into that is  
25 the code section clearly, the rule clearly applies not

1 only to those but any business transactions with a  
2 client. So if the attorney enters into a business  
3 transaction, then Rule 1.8 applies. In this case  
4 they've cited now, I've waited for this, I didn't  
5 raise it because it wasn't pertinent but I waited for  
6 them to do this, they've now pointed out the comment  
7 to the Rule 1.8 that says -- instead of me just  
8 guessing, I want to read the actual language, Your  
9 Honor. This is really very important.

10 Okay. Here's what the comment says: "When a  
11 lawyer acquired by contract and security interest in  
12 the property other than that recovered through  
13 lawyer's efforts in the litigation, such an  
14 acquisition is a business transaction with the client  
15 and is governed by the requirements of Paragraph A."

16 In this case he took a security interest not in  
17 just the judgment, but in all of Cary's property, all  
18 of his cars, his camera equipment, his furniture, all  
19 his future earnings. It wasn't just in -- okay. So  
20 what that means is that they entered into a business  
21 transaction governed by Rule 1.8A, noncompliance of  
22 which would render this transaction unenforceable.

23 So what I'd like the Court to do is if the  
24 Court's going to rule and say it looks like it would  
25 be unenforceable by Cary but not by High Valley, that

1 issue's never been addressed. The reason we filed a  
2 Motion for Reconsideration is because the Court  
3 focused on this land which it's not an adverse, you  
4 haven't proven to me that it's an adverse security  
5 interest or a security interest adverse to Cary. And  
6 in response to that we've shown the Court it doesn't  
7 have to be if it's a business transaction, and this  
8 is, and it's up to them to prove compliance.

9 Mr. Faler says in his briefing we didn't comply  
10 with this because we didn't feel it applied. And so  
11 what it sounds like is that if the Court agrees with  
12 me so far, that means that Cary would have the ability  
13 to set aside this transaction, but the Court may have  
14 some concerns that we don't.

15 THE COURT: And what I'm saying is to say I  
16 agree with you wholeheartedly, I'm not there yet,  
17 although the Motion to Reconsider has got me thinking  
18 about that, but when I start thinking about that I can  
19 take the next step, and that's where I am.

20 MR. SMITH: And I asked the Court to let me  
21 brief that, because that is not an issue that has ever  
22 come up before the Court. My gut reaction is if Cary  
23 assigns that judgment to a third party vacates all of  
24 Cary's defenses, and so if that third party tries to  
25 enforce that judgment, if Mr. Faler stepped forward

1 then and said, oh, yeah, bad security interest or the  
2 security interest in it, then those defenses that Cary  
3 had would go to the third party.

4 I have noted this issue, but my belief is that  
5 when you attach a judgment in this situation like an  
6 attack, that you take that judgment subject to the  
7 defenses that the person had who owned the judgment.  
8 That issue hasn't been briefed because it's never been  
9 raised and the Court is now raising it for the first  
10 time. Defense is an issue of law, it's not going to  
11 be an issue of opinion for me and it's not going to be  
12 an issue of fact. I'm sure case law has dealt with  
13 that.

14 THE COURT: I hope. I haven't found it yet.

15 MR. SMITH: Well, I've had a chance to look for  
16 it, but I haven't looked at it, but it does seem to me  
17 at this point we've given the Court this -- and  
18 actually this 50th Valley case, I don't know if the  
19 Court has had a chance to read that, that's this case  
20 from Washington State.

21 THE COURT: No, I have, too, read that.

22 MR. SMITH: Okay. I can't remember it clearly  
23 because there's so many cases now and after sitting  
24 through that horrendous pretrial, all that criminal  
25 stuff, my mind's awash after that. But it seems like

1 one of the issues in that case was they were raising  
2 issues saying, well, it was a standing issue because  
3 it wasn't really the client who was raising this  
4 issue. It may have been in one of the different  
5 cases, but what the said was, they said, look, this is  
6 a wholly-owned LLC or it's some sort of entity, it's  
7 one and the same.

8 What that tells me is it doesn't always have to  
9 be the client, it can be raised by somebody else to  
10 raise some of these issues and I think that once we  
11 attach that judgment we take subject to Cary Sargent's  
12 defenses and we are raising this defense. Now,  
13 obviously Cary Sargent at this point is going to say,  
14 well, this is a great deal for me, I don't think it's  
15 a defense, but I think we're really talking about the  
16 issues dealing with chosen action, those kinds of  
17 things, and I think once you attach it it has the same  
18 effect as an assignment and we would get it subject to  
19 his defenses.

20 And so with that, Your Honor, if that's the  
21 Court's only hangup, I don't know if it is or not, but  
22 if that's the Court's hangup I'd like an opportunity  
23 to at least look at that because this is a serious  
24 issue. Whereas in the initial decision the Court gave  
25 it very cursory treatment. We've now found

1 substantial case law where attorneys have tried to  
2 secure their fees with their client. That is exactly  
3 what happened in that 50th case, the Valley case.  
4 Very similar facts, but in that case the client  
5 obviously said, well, yeah, but you never let me get  
6 my own attorney, you never did it in writing, you  
7 never complied with the rule, the District Court  
8 disagree, the Court of Appeals disagree and the  
9 Supreme Court reversed all of them and said, hey, this  
10 was a business transaction. Why? Because as soon as  
11 you took security interest in something beyond the  
12 judgment of the case and other things, you entered  
13 into a debtor/creditor relationship, and that is  
14 exactly where these guys are now. It's no longer just  
15 attorney/client, it is debtor/credit and they say that  
16 ramps up the whole thing and changes it. And we've  
17 found a couple other cases that would support that.

18 And so if it comes down to -- if there's some  
19 other reason why the Court disagrees with us, we'd be  
20 more than happy to talk about that, but if it is  
21 simply, well, Mr. Smith, it looks like you have shown  
22 me in the case law that I didn't know about, we didn't  
23 have it before, that, in fact, this is a business  
24 transaction that required compliance with the rule.  
25 Mr. Faler's already admitted noncompliance because he



1 didn't feel like the rule applied. My only remaining  
2 concern is do you have standing to raise this. By all  
3 means let me look at that legally. That's the only  
4 issue left.

5 THE COURT: I'll give you that opportunity.

6 MR. SMITH: Okay. And that's all I have, Your  
7 Honor.

8 THE COURT: All right. Mr. Faler?

9 MR. FALER: Thank you, Your Honor.

10 Your Honor, the only interest that is before  
11 the Court that does apply is the security interest in  
12 the judgment. All of what Mr. Smith argues as to a  
13 business relationship isn't here. He hasn't executed  
14 on anything other than the judgment Cary Sargent  
15 obtained through my efforts against Doyle Beck.  
16 That's the only thing.

17 The Court had it right in the first place  
18 because there's no adverseness as to Cary Sargent and  
19 myself as to that interest. Idaho law provides for  
20 the taking and perfection of security interests, other  
21 than Idaho Code 3-205. An attorney can take an  
22 interest in something either through perfecting it  
23 with the Idaho Code 3-205 motion before the Court or a  
24 written security agreement and proper perfection under  
25 UCC. We did that. We took it before the judgment was

1 entered. We could have gone the other way and asked  
2 the Court to give us only a security interest in the  
3 matter from day one. That's what Idaho Code 3-205  
4 provides.

5 But importantly, Idaho Code 3-205 does not  
6 prohibit any other method of obtaining a lien. It  
7 provides one method. We chose to go the other way, a  
8 written security agreement, a written security  
9 agreement that addressed the judgment that we were  
10 hopeful of obtaining against Mr. Beck and did, in  
11 fact, obtain, and other property. But the only issue  
12 before the Court is the validity as to the judgment  
13 that was attached.

14 All of the language, all of the argument as to  
15 a business transaction doesn't apply here, Your Honor.  
16 It's not before the Court.

17 Rule 1.8A is an ethical rule addressing the  
18 rights and duties of an attorney and his client. It  
19 does not invalidate a lien or a judgment -- on a  
20 judgment that was obtained where the client does not  
21 want the lien invalidated.

22 Cary Sargent does not want the lien  
23 invalidated. He wants -- the technical violation that  
24 occurred here is that I did not advise Mr. Sargent in  
25 writing, to the best of my recollection, to take the

1 security interest concept, the document and go see  
2 another attorney. But Cary Sargent did just that. He  
3 admits that he was told to go see another attorney.  
4 He admits that he, in fact, did that, and then he  
5 signed the documents.

6 What we have is a technical violation, a  
7 technical/ethical violation, and if what Mr. Smith  
8 wants is my license, then so be it, I'll defend that  
9 before the Idaho State Bar. That's not before the  
10 Court, though. Mr. Smith has cited boo-koo cases and  
11 those cases fall into two categories: One, ethical  
12 proceedings against a client -- or against the  
13 attorney based upon a complaint filed by the client.  
14 Two, disputes between the client and the attorney over  
15 what the security interest was in.

16 Now, Mr. Smith cites you to the 50th Valley  
17 case. I don't think the representation as to what  
18 that case says happened. I would ask the Court to  
19 look at the second line of that decision. It's hard  
20 to secure existing attorney's fees and costs owed by  
21 another client. The attorney took a security interest  
22 in his client's property in order to secure, at least  
23 in part, a debt owed by another of his clients.  
24 That's what was addressed there. All the others,  
25 attorney discipline, and if that's what Mr. Smith

1       wants we'll go through that.

2               None of the cases cited address a third party  
3       trying to void a security interest agreement between  
4       an attorney and his client.  What do we have here?  We  
5       have a third party, High Valley, trying to set aside a  
6       security interest in the judgment obtained by me for  
7       my client.  Two, a written security agreement  
8       establishing a lien.  Three, the client hadn't been  
9       advised verbally to go see another attorney about the  
10      security agreement.  Four, the client actually  
11      reviewing the matter with another attorney.  Five, the  
12      security agreement being in writing.  We gave him a  
13      copy of the security agreement minus the description  
14      of the property, you know, 1965, Mustang, something  
15      like that.  He took that, he reviewed the matter with  
16      David Johnson.  I don't know what they talked about,  
17      that's an attorney/client privilege, but the important  
18      thing is he was advised to do it and he did it.

19              The technical violation is simply I didn't put  
20      in writing to go do it, period.  And the reason why  
21      the rule says do it in writing is because in a dispute  
22      between the attorney and his client, the client's  
23      probably going to say you didn't tell me to go do that  
24      and I didn't do it and the attorney's probably going  
25      to say I told you to do it and you didn't do it.

1 That's not the fact situation here. The fact  
2 situation is he was told verbally and he did it and  
3 then he signed the security agreement.

4 The Court had it right the first time around.  
5 The security agreement as to the judgment is simply  
6 not adverse to Mr. Sargent's interests. As to the  
7 security agreement and property other than the  
8 judgment obtained in the litigation, there was an  
9 technical violation. The client was verbally advised,  
10 the client did review the letter with another  
11 attorney, the client is not seeking to avoid the  
12 security interest as to the other property. But most  
13 importantly, it's not before the Court. The only  
14 attachment and the only argument, the only items being  
15 argued about is is there a security interest in the  
16 judgment.

17 Mr. Smith has not brought a declaratory  
18 judgment. The other items are simply not before the  
19 Court. Right now he's attempting to point to  
20 something that our client wants and is definitely not  
21 adverse to my client.

22 Now, there's one point in closing that I've got  
23 to address because Mr. Smith says in his brief that I  
24 knowingly violated Rule 1.8A. I did not knowingly  
25 violate it. I have never knowingly violated any of

1 the professional rules and I take personal offense to  
2 that statement. He cannot know whether I knowingly  
3 violated it or not. I did not read the rule. It  
4 wasn't a knowing violation. I did take the steps that  
5 I thought were proper and it complies with most of the  
6 rule requires, and that is the interest was in  
7 writing, he was advised to seek other counsel and he  
8 did.

9 And I'll just close by saying you had it right  
10 the first time. There's no adverseness here and High  
11 Valley is not entitled to set it aside.

12 Thank you.

13 THE COURT: Thank you, Mr. Faler.

14 MR. SMITH: Let me just tell Bill that my  
15 breach of knowing violation I absolutely apologize  
16 because I have no evidence of a knowing violation and  
17 that was just clearly an oversight on our part. If  
18 I'd have seen that and knew it was there, like I say,  
19 I would have redacted that, cut it out. But at any  
20 event, at this point what we do know is that Mr. Faler  
21 acknowledges a violation of Rule 1.8A, or at least  
22 noncompliance to it, put it that way.

23 Now he's changed the argument a little bit.  
24 Now he's saying that, yeah, there was substantial  
25 compliance. Well, particularly those cases, Your

1 Honor, substantial, you either comply with the rule or  
2 you don't. Substantial compliance is not an option  
3 for an attorney and here's why: What he was supposed  
4 to do was he was supposed to transmit the essential  
5 terms of the transaction in writing to the client in a  
6 manner that could be reasonably understood by the  
7 client. Those terms -- we've identified case law in  
8 our prior briefing. Those terms have to be  
9 transmitted in some writing other than the document  
10 itself, so in a letter or something he has to transmit  
11 and say, okay, here's what we're doing and here's the  
12 terms and those terms have to be fair and reasonable  
13 and he has to then -- then that gives the client an  
14 opportunity to seek independent counsel who then can  
15 review the terms that have been transmitted in  
16 writing, advise the client on what to do and then the  
17 client can make a decision and once he does, he then  
18 has to -- in writing he has to respond back and say in  
19 writing I agree to these terms, these essential terms.

20 The problem with what he's saying is, he's  
21 saying, well, I basically -- I didn't know about the  
22 rule, I didn't read it, but no harm, no foul, because  
23 there's substantial compliance. I have no idea what  
24 Cary Sargent told David Johnson. There are no  
25 documents to even show that they had any meaningful

1 discussion whatsoever. It doesn't matter because it's  
2 noncompliance. I'm only saying to the Court  
3 substantial compliance, there is no case, I looked up  
4 and down everywhere, we've come up with this case at  
5 1.8A, no court has ever let an attorney get by with  
6 saying, well, I substantially complied. It's not  
7 happened. And so what we have now is we have an  
8 admission from Mr. Faler that it's a technical  
9 violation. Well, the truth is is that all the  
10 violations of the ethical rules can be considered  
11 technical violations, but we have noncompliance with  
12 the rule. I believe that even in the comment section  
13 it talks about if there's noncompliance with the rule  
14 that that will give rise to the transaction being  
15 void. We've certainly identified case law that says  
16 noncompliance with the rule makes the transaction  
17 void.

18 So, really, there's only two issues remaining  
19 in my mind on this. If Cary Sargent wanted to raise  
20 this, I have no doubt given what I'm hearing that the  
21 rule would be applied and it would be unenforceable as  
22 against Mr. Sargent.

23 The security agreement. The issue the Court's  
24 raised now is what about you folks because now you've  
25 come in and attached it. You get to raise that rule



1 and I'd like an opportunity to brief that. You said  
2 we could. And I do remember a case now, this is kind  
3 of a precursor, there was a case dealing with 1.8 as I  
4 remember dealing with beneficiaries of a will. They  
5 were able to raise 1.8, even though they weren't  
6 clients, because they had an interest in the outcome.

7 In this particular case, knowing that my client  
8 could obtain a judgment, that the lawsuit was pending,  
9 and if he obtained a judgment Mr. Faler would have  
10 also known that my client would have an interest in  
11 that judgment if he wanted to execute on it. So I  
12 think that there's going to be some corollaries. I  
13 think we're going to find law on this issue and you  
14 are going to give me a chance to raise that.

15 The only other issue that I see that they're  
16 raising, the only other issue that I see that they are  
17 raising is, and they're kind of just merging it all  
18 together, but I'm going to ask the Court to be very  
19 careful on how they're doing it because it's not --  
20 you just got it right last time, because frankly, Your  
21 Honor, I don't think the Court did get it right  
22 because you didn't even address the business  
23 transaction component which we're talking about today.

24 But the other part of the rule that they're  
25 raising is they're saying under Rule 3-205 they have a

1       lien. That does not apply in this case for two  
2       reasons. One is, yes, Mr. Faler's referring to Rule  
3       3-205 had a lien in the judgment, but you have to  
4       perfect your lien or you lose it. In the case law  
5       we've identified, this was given to us by a guy named  
6       Reginald Reeves who has laid all this out in case law,  
7       you have to do something. You just can't sit there,  
8       you've got to file something with the court, you have  
9       to have the court rule on it. He never did perfect  
10      his lien. He still hasn't asked the Court to perfect  
11      his lien and we have already attached a judgment, so  
12      we are first in time, first in right. Yes, he could  
13      beat us, potentially, but he didn't do it.

14               Second, he never raised on behalf of his firm  
15      his lien as a basis for the third party claim of  
16      exemption. The only ground that he referenced was the  
17      security interest, and we feel that that's  
18      unenforceable under Rule 1.8A. He never raised his  
19      potential lien as a basis for the claimed exemption.  
20      Why is that important? Because under the code that  
21      says, quote, "A third party Claimant shall prepare a  
22      written claim setting forth the grounds upon which he  
23      claims the property." And you have to deliver that  
24      claim of exemption back to the sheriff within 14 days.  
25      He never used this as a ground, the 14 days has come

1 and gone, he can't go out on it now.

2 So where does that take us? That leaves us in  
3 my mind with only one issue that has not been  
4 adequately addressed, and that is can we as a party  
5 who has attached a judgment, do we take subject to the  
6 defenses that Mr. Sargent would have had by virtue of  
7 our execution on the judgment. That's the only issue  
8 I see left, Your Honor, and I see that as an issue  
9 that the Court's going to allow us to brief.  
10 Otherwise, I see that we should win this and this is  
11 an issue that is a matter of law. There's very good  
12 case law on it.

13 Only one last thing I would mention when he  
14 mentioned this 50th Valley case and he said that it  
15 dealt with another client, that was the case that  
16 dealt with an LLC. The court just -- and that was an  
17 argument that they raised, and the court collapsed it  
18 down and said, look, the LLC is the client. I'm not  
19 going to let you skate around the qualifications by  
20 pointing that out, and I think that same rule applies  
21 here.

22 So with that, Your Honor, I just would ask for  
23 a couple of weeks to be able to brief this issue.

24 THE COURT: And then I'd like to have that  
25 resolved, that issue resolved in any event so when the

1 Supreme Court looks at it they'll have everything  
2 before them to do what they've got to do and  
3 understand what my thinking was. So I'll give you  
4 both two weeks if you want to submit simultaneous  
5 briefs on that issue, then an additional ten days to  
6 respond to each other's briefs. So 30 days from now  
7 we'll figure it's submitted for a decision.

8 Is there anything else, Mr. Faler?

9 MR. FALER: Just so I'm clear, Your Honor, two  
10 weeks for the initial brief and then one week or ten  
11 days?

12 THE COURT: Let's say ten days after that.

13 MR. FALER: Ten days. Okay.

14 THE COURT: I'm not going to give you any  
15 heartburn these 30 days out.

16 MR. FALER: Thank you. I needed to clarify  
17 that simply because of my hearing aids and the shock.

18 THE COURT: All right. Thanks, gentlemen.

19 (Hearing adjourned.)  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

STATE OF IDAHO )  
 ) ss.

COUNTY OF MADISON )


I, DAVID MARLOW, Certified Shorthand  
Reporter and Notary Public in and for the State of  
Idaho, do hereby certify:

That prior to being examined all witnesses  
named in the foregoing proceeding were duly sworn to  
testify to the truth, the whole truth and nothing but  
the truth.

That said proceeding was taken down by me  
in shorthand at the time and place therein named and  
thereafter reduced to typewriting under my direction  
and that the foregoing transcript contains a full,  
true and verbatim record of said proceeding.

I further certify that I have no interest  
in the event of this action.

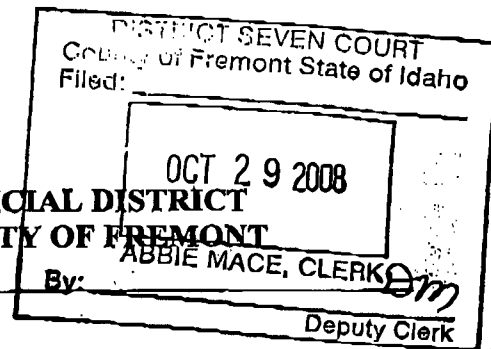
WITNESS my hand and seal this 30th day of  
October, 2008.

  
\_\_\_\_\_  
DAVID MARLOW, CSR and  
Notary Public in and for  
the State of Idaho.

My Commission Expires: 10-2008

*Exhibit G*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT



HIGH VALLEY CONCRETE, LLC, an  
Idaho limited liability company,

Plaintiff,

vs.

CARY SARGENT, and GLENDALE  
CONSTRUCTION, INC., an Idaho  
corporation,

Defendants.

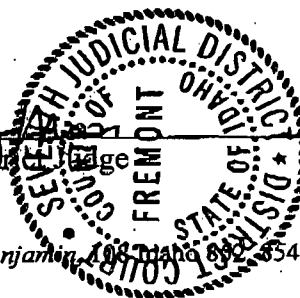
Case No. CV-02-0484

**ORDER**

High Valley lacks standing to use Rule 1.8(a). High Valley invokes the Rule as an adverse party, but Rule 1.8(a) was not written for adverse parties; Rule 1.8(a) was written for clients. The preamble to the Idaho Rules of Professional Conduct explains that the rules "are not designed to be a basis for civil liability."<sup>1</sup> They do not create any statutory liability, do not give rise to a cause of action against a lawyer, and do not create any presumption that a legal duty has been breached.<sup>2</sup> Just because a rule is a basis for sanctioning a lawyer under the administration of a disciplinary authority "does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule."<sup>3</sup> Rule 1.8(a) is not a basis for High Valley to challenge Faler's third-party exemption because High Valley lacks standing to enforce the Rule. High Valley's motion to reconsider is denied.

Dated this 29 day of October, 2008.

Brent J. Moss  
Brent J. Moss, District Judge



<sup>1</sup> Idaho Rules of Professional Conduct, Preamble ¶ 20; *Pichon v. Benjamin*, 105 Idaho 892, 854, 702 P.2d 890, 892 (Idaho Ct App. 1985).

<sup>2</sup> Idaho Rules of Professional Conduct, Preamble ¶ 20.

<sup>3</sup> *Weaver v. Millard*, 120 Idaho 692, 697, 819 P.2d 110, 115 (Idaho Ct. App. 1991) (citing Idaho Rules of Professional Conduct, Preamble ¶ 20).

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was served upon the following individuals via U.S. Mail, postage prepaid, on this 30 day of October, 2008, unless otherwise indicated:

Bryan D. Smith  
B.J. Driscoll  
P.O. Box 50731  
414 Schoup Ave.  
Idaho Falls, ID 83405

John Ohman  
P.O. Box 51600  
Idaho Falls, ID 83405

William D. Faler  
P.O. Box 50130  
Idaho Falls, ID 83405

By: Heborah Mace  
Deputy Clerk